

Item # \_\_\_\_\_

Prepared by: Gloria Kelly  
Real Estate Services

Approved by: Lisa Kelly  
County Attorney

RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE STATE OF TENNESSEE, ALLOWING ITS ACCESS TO CERTAIN OUTSIDE AREAS WITHIN THE COUNTY LEASED PROPERTY AT 160 NORTH MAIN STREET FOR REPAIR AND REPLACEMENT OF THE GRANITE PAVER SYSTEM ON THE MALL PLAZA; AND AUTHORIZING THE SHELBY COUNTY MAYOR TO EXECUTE THE MEMORANDUM OF UNDERSTANDING. SPONSORED BY COMMISSIONER DEIDRE MALONE.

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**WHEREAS**, Shelby County leases certain property from the State of Tennessee located at 160 North Main Street; and

**WHEREAS**, The State of Tennessee is now desirous of making certain improvements to the surrounding area more specifically, the State is desirous of replacing the waterproof membrane and the paver system around the building on the mall plaza affecting the property and surrounding area at 160 North Main Street; and

**WHEREAS**, It is necessary in conjunction with the repair and replacement of the granite paver system on the mall plaza to grant the State of Tennessee, temporary access to the affected areas of the County leased property at 160 North Main Street, under the terms, covenants, conditions and provisions of a Memorandum of Understanding, which is attached hereto and hereby incorporated by reference.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE**, That the aforementioned Memorandum of Understanding with the State of Tennessee, allowing temporary access to certain outside areas within the County leased property at 160 North Main Street for repair and replacement of the granite paver system on the mall plaza be and the same is hereby approved; and that the Mayor be and he is authorized to execute the attached Memorandum of Understanding granting the same.

**BE IT FURTHER RESOLVED**, That said Memorandum of Understanding shall be in effect for a continuous period of time effective with the execution of said Agreement and automatically terminating at the completion of said repair and replacement work activities, or on June 30, 2010, whichever date occurs first.

**BE IT FURTHER RESOLVED**, That this Resolution shall take effect from and after the date it shall have been enacted according to due process of law, the public welfare requiring it.

\_\_\_\_\_  
Joe Ford, Interim County Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commission

ADOPTED \_\_\_\_\_

## **SUMMARY SHEET**

### **I. Description of Item**

The subject property at 160 North Main Street is leased by the County from the State of Tennessee. The State of Tennessee needs to repair and replace the waterproof membrane and the paver system around the building on the mall plaza. It is necessary in conjunction with the repair and replacement of the granite paver system on the mall plaza to grant the State of Tennessee, temporary access to the affected areas of the County leased property at 160 North Main Street, under the terms, covenants, conditions and provisions of a Memorandum of Understanding. This Memorandum of Understanding would be in effect for a continuous period of time effective with the execution of said Agreement and automatically terminating at the completion of said repair and replacement work activities, or on June 30, 2010, whichever date occurs first. Based upon the above, the Administration recommends that this Memorandum of Understanding be approved.

### **II. Source and Amount of Funding**

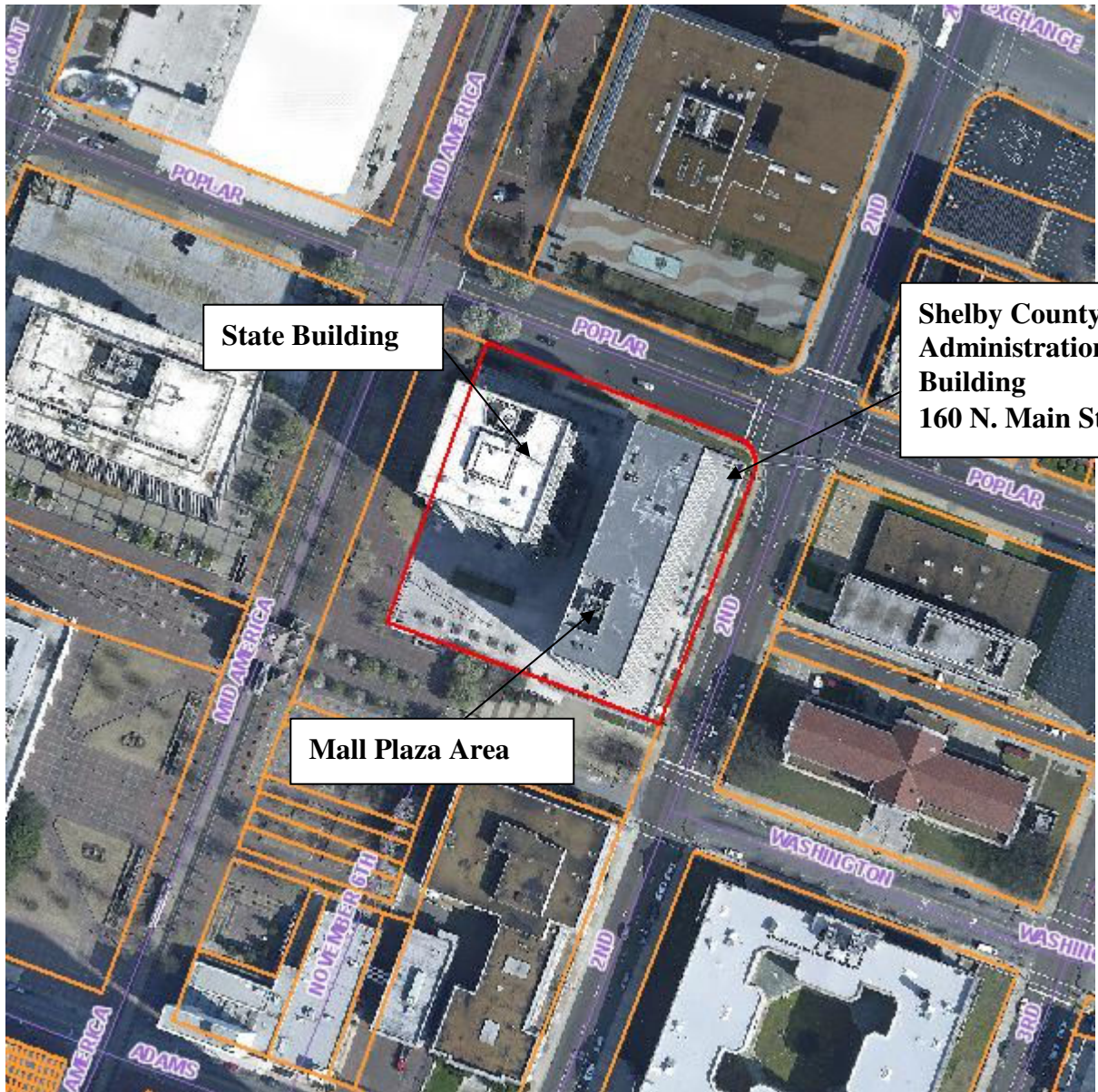
No County Funds Required

### **III. Contract Items**

Memorandum of Understanding

### **IV. Additional Information Relevant to Approval of this Item**

## Property Map



**MEMORANDUM OF UNDERSTANDING BETWEEN  
SHELBY COUNTY GOVERNMENT ("COUNTY") AND  
STATE OF TENNESSEE FOR WORK TO BE PERFORMED AT  
160 NORTH MAIN, MEMPHIS, TN**

This negotiated Memorandum of Understanding (MOU), entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between Shelby County Government ("COUNTY") and the State of Tennessee ("STATE"), (collectively referred to as "the PARTIES"), outlines the understanding between the parties for the replacement of the waterproof membrane and the paver system around the building on the mall affecting the property and surrounding area at 160 North Main Street ("PROJECT").

**RECITALS**

**WHEREAS**, COUNTY leases certain property from the State of Tennessee located at 160 North Main Street, Memphis, TN 38103; and

**WHEREAS**, The STATE is now desirous of making certain improvements to the surrounding area more specifically, the State is desirous of replacing the waterproof membrane and the paver system around the building on the mall plaza affecting the property and surrounding area at 160 North Main Street; and

**WHEREAS**, The term of this MOU shall commence upon the execution of this MOU and shall remain in effect until the earlier of final completion of said PROJECT or June 30, 2010, at which time this Agreement shall automatically terminate; and

**WHEREAS**, This Memorandum of Understanding shall serve to outline the specific duties and responsibilities of the PARTIES.

**NOW, THEREFORE, BE IT RESOLVED** that, pursuant to the above stated, and in consideration of the terms and conditions contained within this Memorandum of Understanding (MOU), the parties agree to the following duties and responsibilities.

**I. DUTIES AND RESPONSIBILITIES**

- A. COUNTY grants STATE a temporary license to access COUNTY'S leased property and the boundary between the plazas to accomplish the work described below during the term of this MOU.
- B. COUNTY permits STATE to lift the panels along the boundary between plazas lifted and set aside temporarily to provide access to the membrane below.

- C. COUNTY building engineer will coordinate temporary storage location with STATE or State's authorized contractor.
- D. COUNTY will assist in or allow STATE or STATE's contractors' to cordon off storage areas and areas being worked on, for safety.
- E. STATE will provide three (3) full days notice to both COUNTY and Architect for visual inspection of existing panels and membrane condition prior to start of STATE work in this area.
- F. STATE's contractor shall use the utmost care in lifting, handling and storing COUNTY's plaza panels.
- G. STATE's Contractor shall mark panels such that they can be put back in their original positions.
- H. In the event of damage, damaged panels shall be replaced by existing panels from the STATE plaza and STATE's contractor shall select the best, flattest and most visually compatible panels for replacement. Selected panels shall be subject to approval by COUNTY. In the event no panels from STATE are deemed suitable to COUNTY, STATE shall replace COUNTY panels at STATE's expense.
- I. Contractor shall select Six (6) of the least damaged, most flat and most visually compatible panels removed from the STATE plaza and provide them to the COUNTY engineer for attic storage.
- J. Tie-in to existing COUNTY plaza waterproofing membrane shall be monitored and approved by COUNTY engineer. STATE's contractor shall coordinate installation with COUNTY engineer and provide three (3) full business days notice to COUNTY engineer prior to tie-in.
- K. STATE shall maintain watertight condition at COUNTY membrane during construction.
- L. COUNTY shall allow limited equipment access on COUNTY plaza pavers only as required for membrane tie-in.
- M. No equipment of any type shall be allowed on COUNTY membrane for any purpose. COUNTY membrane shall be protected by STATE or its authorized workers during construction. If the COUNTY's membrane is damaged during the course of any work performed under or in connection with this MOU, STATE agrees to repair COUNTY membrane with compatible materials to be approved by COUNTY engineer at STATE's sole expense.

- N. STATE agrees to maintain safe ingress and egress from both COUNTY and STATE buildings during construction and will take all necessary precautions to do so.

## **II CLAIMS**

- A. The parties, being government entities under the laws of the State of Tennessee, will be liable to each other for claims arising from or related to this Memorandum of Understanding as provided under the laws relating to Tennessee governmental entities. With respect to claims against the STATE, the governing law is Tennessee Code Annotated Section 9-8-307 et seq. With respect to the claims against the COUNTY, the controlling law is Tennessee Code Annotated Section 29-20-101 et seq.
- B. In no event shall the State bear liability for loss, expense, attorneys' fees or claims for injury or damages arising out of acts or omissions in the performance of this MOU on the part of the County. Likewise, the County shall bear no liability for loss, expense, attorneys' fees or claims for injury or damages arising out of acts or omissions in the performance of this MOU on the part of the State. It is the express intention of the parties hereto that neither shall bear liability for injury or loss caused by the other party and each shall be responsible for injury or loss as provided by applicable law as set forth above as the governing law for claims against the County or State.

## **III DISPUTES**

- A. The parties will negotiate in good faith to resolve disputes among themselves. The parties may but are not required to participate in non-binding mediation to resolve disputes. If the parties are unable to voluntarily resolve their disputes, they may institute legal proceedings as authorized in Section II.A.
- B. Time is of the essence of this MOU and all of its provisions. STATE claims against the COUNTY will be brought in the courts of Shelby County, Tennessee. COUNTY claims against the STATE will be brought in the Claims Commission.

## **IV. GENERAL PROVISIONS**

- A. The parties hereby agree that any of the parties hereto shall have the right to terminate this MOU at any time after the full execution of the same, if and when it becomes necessary to do so, in the opinion of that party, but only

after the requesting party has given the other parties sixty (60) days written notice of such intent to terminate.

- B. Although this MOU contains all of the agreements of the parties and no oral representations from any party are binding, each party agrees to operate in good faith to implement and maintain the duties of this MOU. When necessary, the parties may amend this MOU in writing, signed by all parties.
- C. This MOU is complete and contains the entire understanding between the parties relating to the subject matter contained herein. This MOU supersedes any and all prior understandings, representations, negotiations, and agreements relating hereto, whether written or oral.
- D. The parties hereto, in the performance of this MOU, shall not act as agents, employees, partners, joint venture associates, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent entities and that nothing in this MOU shall be construed to create an employer/employee relationship or to allow any party to exercise control or direction over the manner or method by which the other parties transact their business affairs or provide their usual services.
- E. All parties to this MOU agree that during all relevant times each will observe and shall comply with all applicable guidelines, state, federal and local law, ordinances and regulations that in any manner affect the respective responsibilities of PARTIES in the performance of this Memorandum of Understanding. In the event of any ambiguity or conflict in any such guidelines, contract provisions, or applicable laws or regulations, each party, in order to assure its compliance with the covenant set forth in this paragraph , shall work through its respective counsel in an attempt to resolve the conflict. In the event no resolution is reached, the parties will work with non-binding mediation as described in Section II of this MOU.
- F. This MOU shall be governed by and construed in accordance with the laws of the State of Tennessee.
- G. This MOU may be executed in any number of counterparts, of which each shall be deemed to be an original, and all of such counterparts shall constitute one agreement. To facilitate execution of this MOU, the parties may execute and exchange by telephones facsimile counterparts of the signature pages.
- H. If any portion of this MOU is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this MOU shall be deemed valid and operative, and to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative.



The failure by any party to enforce, against another party, any term or provision of this MOU shall not be deemed to be a waiver of such party's right to enforce against another party the same or any other such term or provision in the future.

- I. This MOU shall be effective upon execution of the final signatory below. No party may assign its obligations and rights under this agreement without the prior written consent of the other parties, and any such prohibited assignment shall be void.

**IN WITNESS WHEREOF**, the parties hereto have set their signatures for the purposes contained herein, on the day and date first written below.

***REVIEWED UNDERSTOOD AND ACCEPTED:***

**STATE OF TENNESSEE**

**SHELBY COUNTY GOVERNMENT**

BY: \_\_\_\_\_  
M. D. Goetz, Jr.  
Commissioner  
Department of Finance and Administration

BY: \_\_\_\_\_  
Joe Ford, Interim County Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Contract Administrator/  
Assistant County

**OTHER COUNTY APPROVALS:**

\_\_\_\_\_  
County Real Estate Manager

\_\_\_\_\_  
Land Bank Administrator

**STATE OF TENNESSEE  
COUNTY OF SHELBY**

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared **JOE FORD, INTERIM MAYOR OF SHELBY COUNTY, TENNESSEE**, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be **Interim Mayor** of Shelby County, Tennessee, the within named bargainor, one of the counties of the State of Tennessee, and that he as such **Interim Mayor**, of said county, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of Shelby County, Tennessee, by himself as **Interim Mayor** of said Shelby County, Tennessee.

**WITNESS** my hand and official seal at office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires

\_\_\_\_\_

**STATE OF TENNESSEE  
COUNTY OF SHELBY**

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared **M. D. GOETZ, JR., COMMISSIONER, DEPARTMENT OF FINANCE AND ADMINISTRATION, STATE OF TENNESSEE** with whom I am personally acquainted, and who, upon oath, acknowledged himself to be **COMMISSIONER**, of the **DEPARTMENT OF FINANCE AND ADMINISTRATION**, the within named bargainor, a corporation of the State of Tennessee, and that he as such **COMMISSIONER**, of said government entity, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the governing entity by himself as **COMMISSIONER**.

**WITNESS** my hand and official seal at office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires

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